

Article 7:
NONCONFORMING USES

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A. Purpose and Intent

1. **Land use objectives:** The objective of this article is to regulate and limit the development and continued existence of uses, structures and lots established prior to the effective date of this ordinance which do not conform to the requirements of this ordinance. Certain nonconformities may continue, but the provisions of this article are intended to curtail substantial investment in non conformities and to bring about their eventual improvement to a conforming status or elimination in order to preserve the integrity of this article and the desired character of the Town.
2. **Conditions for continuation:** Any nonconforming use, structure or lot which lawfully existed as of the effective date of this ordinance and which remains nonconforming, and any use, structure or lot which has become nonconforming as a result of the adoption of this ordinance or any subsequent reclassification of zoning districts or other amendment to this ordinance, may be continued or maintained only in accordance with the terms of this article.
3. **Variances and special exceptions:** The limitations of this article shall not apply to structures or lots whose nonconforming features are the subject of a variance or a special exception that has been granted by the Board of Zoning Appeals or a modification or condition that was approved by the Town Council.
4. **Change in title or possession:** If any change in title or possession of a lot or building, or renewal of a lease of a nonconforming building or use occurs, the existing nonconforming use or building may continue so long as all other applicable provisions of this article are met.

B. Nonconforming Uses: Change, Discontinuation & Expansion

1. **Change of nonconforming use to more restrictive use:** If no structural alterations are made to a nonconforming use of land or building, a nonconforming use of land or of a building may be changed to another nonconforming use of the same or of a less restrictive classification. Whenever a nonconforming use of land or buildings has been

changed to a more restrictive use or to a conforming use, such use shall not thereafter be changed to a less restrictive use.

2. **Expansion of nonconforming use:** Except as provided for herein, a nonconforming use shall not be expanded or extended beyond the floor area or lot area it occupied on the effective date of this ordinance.
3. **Discontinuation of nonconforming use:** If a nonconforming use is discontinued or abandoned for a continuous period of more than two (2) years, including any period of discontinuation before the effective date of this ordinance, then that use shall not be renewed or reestablished and any subsequent use of the lot or structure shall conform to the regulations of this ordinance. When any nonconforming use is replaced by a permitted use, the use shall thereafter conform to the regulations for the district, and no nonconforming use shall thereafter be resumed.

C. Nonconforming Structures

1. **Repair or reconstruction of nonconforming structure:** No building which is nonconforming for reasons other than use, such as setbacks or other site conditions, shall be restored or changed to another nonconforming use after damaged beyond fifty (50) percent of the fair market value of the building prior to damage. If a building is damaged by less than fifty (50) percent of the fair market value, it may be repaired or reconstructed and used as before the time of damage, provided that such repairs or reconstruction be completed within twelve months from the date of such damage. It shall be the duty of the property owner to provide two estimates of fair market value to the Planning and Zoning Administrator who will establish market value.
2. **Alteration or enlargement of nonconforming structure:** A nonconforming structure or use shall not be extended, enlarged, reconstructed or structurally altered, except in conformity with this article or when required to do so by law or ordinance or when the change does not compound the existing violation.
3. **Relocation of nonconforming structure:** A nonconforming structure shall not be moved in whole or in part to any other location unless every portion of such structure and the use thereof is made to conform with all requirements of this ordinance and other applicable ordinances.

4. **Pre-existing structures with prior approvals (“grandfather” clause):** Nonconforming buildings for reasons other than use which have been issued a building permit prior to annexation or amendments to this ordinance shall be permitted under the conditions of said permit but thereafter held to the conditions herein.

D. Nonconforming Lots

1. **Usage of nonconforming lot of record:** If a lot was approved on a subdivision plat and duly recorded prior to the effective date of this ordinance and if such lot met the requirements of the subdivision ordinance in effect at the time of recordation, then, such lot may be used for any use permitted under the current zoning district designation even though the lot does not meet the lot area or lot width and depth requirements of the district, provided that all other regulations (such as setbacks, yards requirements, density, screening, etc.) of this ordinance can be satisfied.
2. **Prohibition on establishment of nonconforming lot:** A lot may only be established after the effective date of this ordinance if such lot conforms with all requirements of this ordinance.
3. **Boundary line adjustments:** Notwithstanding the provisions hereinabove, boundary line adjustments may be permitted between nonconforming lots provided the Planning and Zoning Administrator finds that the degree of nonconformity is not increased due to such adjustment.
4. **Eminent domain and condemnation:** Any lot which, by reason of realignment of a Town, State or Federal highway, street or other public improvement which is implemented by reason of public land acquisition or condemnation proceedings related thereto, has been reduced in size to an area less than that required by law, shall be considered a nonconforming lot of record subject to the provisions set forth herein; and any lawful use or structure existing at the time of such public acquisition or condemnation proceedings which would thereafter no longer be permitted under the terms of this ordinance shall be considered a nonconforming use or structure except as where the average front setback establishes a new setback line.

E. Nonconforming Signs

Refer to Article 10, *Sign Regulations*, Section I, *Nonconforming Signs*.

F. Relationship to Site Plan Requirements

A change or addition to any non-conforming use, structure, or site subject to a major or minor site plan (Article 11) shall require that the entire use, structure, or site (including both the non-conforming and conforming improvements) be brought into full conformance with all of the requirements of this ordinance, provided that the Planning Commission, upon recommendation by the Planning and Zoning Administrator, may waive a portion or all of the individual requirements for conformance.